

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRYAN A. SMITH,

Petitioner - Appellant,

v.

ROBERT AYERS, Warden,

Respondent - Appellee.

No. 06-17343

D.C. No. CV-04-03983-VRW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, Chief District Judge, Presiding

Submitted December 3, 2007^{**}

Before: GOODWIN, WALLACE and FISHER, Circuit Judges.

California state prisoner Bryan A. Smith appeals pro se from the district court's judgment dismissing as moot his 28 U.S.C. § 2254 petition challenging the

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

California Board of Prison Terms’ (“the Board”) decision finding him not suitable for parole.

Because the Board subsequently found Smith suitable for parole, and because Smith has now been released on parole, we conclude this appeal is moot.

See Burnett v. Lampert, 432 F.3d 996 (9th Cir. 2005).

AFFIRMED.